

In the Matter of Merchant Mariner's Document No. Z-837625-D1 and
all other Seaman Documents

Issued to: JOHN L. BANKS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1023

JOHN L. BANKS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 August 1957, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as an oiler on board the American SS PIONEER STAR under authority of the document above described, on or about 1 May 1957, Appellant assaulted and battered the Junior Third Assistant Engineer, Maxwell J. Winters, with a wrench.

At the beginning of the hearing on 5 August 1957, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and specification.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the officer allegedly assaulted and that of the Chief Engineer, the testimony of the officer allegedly assaulted and that of the Chief Engineer, as well as entries in the logbook of the PIONEER STAR; and, in rebuttal, the testimony of a fireman. Appellant testified in his own defense.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was mailed on 4 September 1957. Appeal was timely filed on 1 October.

FINDINGS OF FACT

On 1 May 1957, Appellant was serving as an oiler on board the American SS PIONEER STAR and acting under authority of his Merchant Mariner's Document No. Z-837625-D1 while the ship was in the port of Brisbane, Australia.

Appellant was the oiler on the 2000 to 2400 watch. He failed to relieve the 1600-2000 watch and was found in his compartment some time after 2000 in an intoxicated state by Mr. Winters, Junior Third Assistant Engineer, who was the engineer on watch. He forbade Appellant to enter the engine room in that condition. About 2045, Appellant was observed on the engineroom flat by Mr. Winters who objected to Appellant's presence. Appellant attempted to hit Mr. Winters with a wrench but missed. When the Junior Third Assistant attempted to telephone the Chief Engineer, Appellant hit him on the head with the wrench, so severely lacerating his scalp as to require five days hospitalization. The Junior Third Assistant promptly complained of the attack and Appellant admitted that he had struck Mr. Winters with a wrench. The wrench was later found in the bilges.

Appellant's prior record consists of a one-month outright suspension and 5 months on 12 months probation in 1953 for assault and battery on a fellow crew member.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The appeal is based on the grounds that the order imposed is too severe under the circumstances; and the findings of the Examiner are not supported by the evidence which indicates doubt as to whether Appellant was acting in self-defense.

APPEARANCES: Messrs. Klein, Sardaro and Nolan of New York City
by Robert J. Ward, Esquire, of counsel.

OPINION

The substantial weight of the evidence which was accepted as credible by the Examiner supports the finding that Appellant assaulted and battered the Junior Third Assistant Engineer with a wrench. The victim immediately complained of the assault. Shortly thereafter, Appellant admitted the assault in the presence of the Chief Engineer who testified, at the hearing, to such admissions by Appellant. This corroborated the version of the incident contained in the testimony of the Junior Third Assistant Engineer. The Examiner rejected Appellant's unsupported testimony that he acted in self-defense. This vicious assault was clearly such a serious offense as to merit the order of revocation imposed by the Examiner.

ORDER

The order of the Examiner dated at New York, New York, on 29
August 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 18th day of April, 1958.